

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISIO

BETTY DAFOE,

Plaintiff,

v.

CIVIL ACTION NO. 2:17-cv-00422

C.R. BARD, INC., et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER
AND SHOW CAUSE ORDER**

Pending is Defendant C.R. Bard, Inc.'s Motion to Dismiss with Prejudice or, in the Alternative, Motion for an Order to Show Cause for Failure to Serve a Plaintiff Fact Sheet, filed September 10, 2018. (ECF No. 21). Defendant C.R. Bard, Inc. ("Bard") seeks an order dismissing the case with prejudice for plaintiff's failure to serve a Plaintiff Fact Sheet ("PFS"), or, in the alternative, to enter an order requiring plaintiff to show cause why the case should not be dismissed for failure to serve a PFS. Plaintiff has not responded to the motion.

The court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the factors identified in *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503-06 (4th Cir. 1977), that Bard should be dismissed without prejudice from this case for plaintiff's failure to serve PFS in compliance with the court's previous pretrial order.

Therefore, the court **ORDERS** that the motion to dismiss (ECF No. 21) is **GRANTED in part** to the extent Bard seeks dismissal, but **DENIED as to the remainder of the relief sought including that the case be dismissed with prejudice and that a show cause order be entered as to Bard.** The court **ORDERS** that Bard is dismissed without prejudice.

One unserved defendant, Sofradim Production SAS, remains. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, the court **ORDERS** that plaintiff show cause on or before **February 4, 2020**, why the remaining defendant, Sofradim Production SAS, should not be dismissed without prejudice. Prior to the above deadline, plaintiff may move to dismiss the remaining defendants and close the case, thereby relieving her of the obligation to show cause.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: January 21, 2020



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE